IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Appellant,

vs.

CHARLES F. GIAMPA,
Respondent.

FILED
December 12, 2007
Janette M. Bloom
Clerk of Supreme
Court
Supreme Court
No. 50428
District Court
No. 98 D224029
Due Date: 12/10/07

APPELLANT VICTORIA GIAMPA'S
CIVIL PROPER PERSON APPEAL STATEMENT

JUDGEMENT OR ORDER YOU ARE APPEALING:

FILED DATES: 9/26/07 and 10/2007 NAME ORDER: Oral and Oral Order

NOTICE OF APPEAL: August 28, 2007.
Related Cases: N/A

ISSUES ON APPEAL:
divorce temporary child custody/visitation
child/spousal support/arrears
non-modifiable settlement agreement
interest due
constitutional/due process violations
bankruptcy order sanctions

Appellant in proper person:

Victoria Giampa
1848 Wellington Court
Las Vegas, NV 89014
Appellant In Proper Person

Counsel for Respondent:
Bryce C. Duckworth
1935 Village Center Circle
Las Vegas, Nevada 89134

VICTORIA GIAMPA

On September 23, 1998, after a 21-year marriage, and after a brief hearing, the parties were granted a Decree of Divorce and where VICTORIA, a stay-at-home-mom, was granted primary physical custody of both minor children, MARCO and SARAH, who were adopted by the parties. CHARLES appeared by and through, Bryce C. Duckworth, Esq. who prepared the final Order. One year to the day, CHARLES was granted a reduction in visitation from (3) weeks down to (2) because of his heavy work schedule. VICTORIA believes that the Court did not reduce CHARLES' time but effectively and regrettably reduced the children's time with their father. From that time on, CHARLES did not exercise his right to overnight visitation for more than (5) years, did not follow the parenting plan, willfully withheld paying support, and refused to pay the monthly bill for the family vehicle causing it to be repossessed. VICTORIA and the (2) minor children were at times short on food and money for household expenses such as the mortgage payment and utility bills that were all seriously past due even though CHARLES has the ability to pay. Although there is no provision in the custody agreement for visitation with other family members, the disruption caused the children to be

separated from both parents for a period of (6) days during a traditional holiday which is unprecedented within the custody agreement. CHARLES' willful and malicious pattern and practice in not paying his support and bouncing checks forced VICTORIA on numerous occasions to file Motions For Order to Show Cause. However, just days before these scheduled motions CHARLES would purge his willful conduct and pay up his obligation. Five years later, when CHARLES began to exercise visitation, he made reservations in gaming casinos/hotels exposing the children to the greater physical risk of loitering pimps, prostitutes and their customers in the hallways. CHARLES allowed the parties' minor children to hang out alone at night after curfew and left it up to them to walk directly to school from these public places without parental supervision. Completely indifferent to their safety and welfare, Charles rents an apartment at the Country Club Towers at a cost of $1,500 per month, and took step by step effort to deliberately fool and deceive and purposefully mislead the Court into believing that he is living in the apartment with the children on a day- to-day basis. CHARLES motivations for a temporary change of custody was initiated in bad faith and should never have been rewarded a de facto change of custody which resulted in depriving the children of their need for stability, protection, and support and guidance in their education. Based on such willful conduct, the Court should have barred CHARLES from seeking custody under the doctrine of unclean hands. CHARLES, an insurance broker, began to rob and loot the community property estate by liquidating certain stock, forging VICTORIA'S name and stealing for himself and his attorney's fee for such ill-advice and ostensible legal representation the entire cash values from whole life insurance policies on the lives of

VICTORIA'S parents and children. The parties agreed to non-modifiable terms and conditions comprising the division and distribution of community property assets pursuant to the Non-Modifiable Property Settlement Agreement. The parties' Agreement has been approved, ratified and merged into the final Divorce Decree such that certain unmistakable terms and conditions of the Agreement called for CHARLES to pay VICTORIA her fair and equal community property share of the equity in the marital home and also required him to purchase or turn over certain real and personal property to VICTORIA. VICTORIA has discovered that the business, Chuck Giampa & Associates, Inc. is actually valued at $500,000.00 rather than the mere $272,000.00 that she and the Court had been misled and fraudulently induced into accepting as true by CHARLES. CHARLES did stipulate and agree and was Court Ordered to pay to VICTORIA $136,000.00, as and for, the purported community value in said business. However, another insurance brokerage business, Network Insurance Services, Inc. which was formed, organized and operating during the marriage was not disclosed, divided or any community equity distributed, and no community value has been assessed against this undisclosed business. When VICTORIA sought the Court's assistance in locating, dividing and distributing such community assets that CHARLES was in strict violation of leaving the children home alone and unsupervised without parental supervision, the Court imposed sanctions against her amounting to $14,350.00. Further, the parties did stipulate and agree to a non-modifiable sum of $5,300 per month for spousal support for a determined period of 11 years as well as making monthly payments of $2,400 pursuant to an Amortization Schedule for a Property Equalization Payment and

providing for Equalization Debt payments on an 11-year amortized payment plan at 9% interest. Pursuant to Nevada statute, VICTORIA is entitled to interest which shall be calculated from the date of the original judgment entered by the trial court. Prompted by bias and favor, the Court failed and refused to honor and uphold material assertions made during the divorce proceeding when at void dire on September 24, 1998, CHARLES promised not to seek any future reduction in agreed upon support payments to VICTORIA. CHARLES breached that stipulation and agreement made an Order of the Court with impunity when he sought, subject to bias and favor and obtained from the Court, an unlawful reduction in his monthly spousal obligation from $5300 per month to $3500 per month by unsubstantiated and false claims of loss of gross annual income.

TEMPORARY ORDER IS CONSTITUTIONALLY DEFECTIVE

VICTORIA believes that the Court's awarding of a temporary change of custody was arbitrary and unreasonable so as to constitute a substantive due process violation of her liberty interest in visitation with her children; that the nature of a temporary order and the remedies available to her to enforce any visitation with children living in their own apartment is constitutionally defective. The Court deprived VICTORIA of any parental involvement and resulted in being estranged and alienated from her children when they are in the greatest need of parental guidance and support. That it was insensitive to the delay in this case which deprived VICTORIA and her children a prompt resolution without conducting a hearing

or immediately entering a proper disposition, that it failed to place a termination date of the temporary order which left out any hope of a final determination to facilitate a continued and close relationship between VICTORIA and her children, that it never attempted to make any further orders to protect the children's physical and psychological well-being and the children's need for support and guidance in their need for an appropriate education, that it acted unreasonably, arbitrarily and unconscionably in denying VICTORIA relief to hold CHARLES in contempt and deliberately declined to enter a final order knowing full well that a temporary order for a change in custody would never be fully resolved given the age of the children. That the Court's continuance of procedural motions ultimately turned this temporary custody situation into an endless round of procedures with no possibility of vindication or ultimate success, and that it assisted CHARLES in rendering this case as moot. The Court ignored the magnitude and duration of the loss of visitation, deliberately overlooked the difficulties in trying to maintain contact, and failed to recognize how any visitation plan could possibly work; failed to consider the objective reasonableness of the claims and defenses asserted by VICTORIA and the reckless, willful, malicious, and illegal conduct of CHARLES and his counsel of record. VICTORIA contends the Court has jurisdiction and the power to make short-term, temporary adjustments to the parties' custody arrangement on an emergency basis to protect and safeguard her children's welfare, security and the children's need for guidance and supervision for an appropriate education when an appeal is pending. That the Court and the Nevada Supreme Court failed to do so. That the issues of custody and visitation are of continuing public interest and likely to recur because in dismissing her

emergency appeals, it had the effect of encouraging CHARLES' illegal snatching of the children. The Court failed to enforce its own Court Orders that the children are not to be left alone for more than (3) hours and failed to sanction CHARLES for contempt for violating such Orders when he made several out of town trips out of the jurisdiction and out the country. Clearly, CHARLES could not properly supervise or control the children's choice of friends, provide assistance regarding their hygiene and eating habits, nor could properly provide support and guidance with their education. CHARLES on each occasion failed and refused to provide VICTORIA with written notice of his jurisdictional absences despite lawful Court Orders requiring his compliance. He sold himself to the minor children by buying them expensive cars, cell phones, front row seats to concerts, giving them excessive pocket money, and more shocking, the unbridled freedom of aimless activity and unsupervised nighttime activity after curfew hours, exposure to harmful influences on the street, and the unfettered freedom to live unsupervised. VICTORIA filed emergency appeals to the Supreme Court and sought their help and was denied any relief.

TEMPORARY ORDER IS UNCONSTITUTIONAL IN DEPRIVING CHILDREN OF AN APPROPRIATE EDUCATION AS PREVIOUSLY ORDERED BY THE COURT –

VICTORIA contends that her due process rights were violated when the Court failed to protect her parental involvement in supporting and guiding her children's education. CHARLES' continuing lack of support and guidance in the children's education resulted in their

truancy, failing grades and withdrawing from school. Without VICTORIA'S knowledge and involvement, CHARLES continually acted against the best interest of the children when he withdrew them from school and enrolled them in an adult education program which resulted in the harm of Sarah not receiving a education from a traditional high school and Marco not receiving education from a Christian High School as previously Ordered by the Court. VICTORIA contends that this issue which is subject to change in the future is not necessarily moot. CHARLES' continual refusal to include VICTORIA in decisions regarding the children's education impaired their ability to fully develop the skills necessary to receive an appropriate education. Regarding the children's medical concerns: This is a particularly troubling violation because VICTORIA had no other source of information available to her. CHARLES' neglectful pattern and practice was in failing to give VICTORIA copies of the children's medical, dental and other important records and information about the children, names and addresses of the children's doctors, notification of the children's accidents and emergency medical care, the names of health care providers and their place of treatment. CHARLES' sworn affidavit lists the dates and times when he left the jurisdiction and traveled out of the country and left it up to two minor children to contact their mother which, of course, they never did. When VICTORIA came forward to oppose CHARLES' continuing violations, believing it is not in the best interests of the minor children, she had been unfairly and severely sanctioned by Judge Gloria Sanchez and ordered to pay hefty attorney fees amounting to over $14,000. VICTORIA believes that she is a victim and actually having suffered prejudice and retaliation from the Court for having come forward to

defend her right to protect and defend their minor children's statutory and constitutional rights. Other important factors that the Court failed to consider includes CHARLES' continuous failure to encourage the children to maintain and facilitate a continuing relationship with their mother and evidence of bias because of the lack of imposition of sanctions by the Court.

THE COURT: I mean, the main issue see to me is what has happened to these kids here, but now it's too late. It's unfortunate, but it is too late. And Marco is going to do what he's going to do and Sarah is going to go do what she's going to do. (Tr. Pg. 13/L21) Ma'am, I look at violations at the time they occurred. I don't look at them necessarily but I just want you to understand at this point in time I'm getting this case, which is now as I said, a multi-bucket case, so far from me being able to address those issues because, unfortunately now these children are close -- one's emancipated and the other one is going to emancipate in four weeks. There is really not much I can do to issue Orders to remedy how Marco may have been raised. Okay. It's just too late - it is - as a practical matter. And I want you to understand that that's too late. *Does that mean I cannot sanction a party for violating Orders?* (Tr. Pg. 16/L24)

EMANCIPATION -

VICTORIA challenges the Court's ruling that these children are emancipated simply because they attained the age of majority. Constitutional rights do not mature and come into being magically only when the children attains the state-

defined age of majority. The Court failed to balance or even appropriately recognize the children's liberty interests. At the time the Court issued its temporary Order, VICTORIA'S children were the ages of 15 and 16 and had no capacity to contract and argues that her children still has no capacity to contract for a rental agreement at the Country Club Towers because CHARLES still exercises legal control. CHARLES has the ability and pays for the parties' children rent, health insurance, and car insurance. A specified age of majority is not required by the children in order to assure them parental support and guidance while they attain their education.

PROCEDURAL DUE PROCESS RIGHTS VIOLATED -

The Court record in this case evidences a history of violation of due process that was ongoing and continuing and it failed to consider the present comfort and future well-being of the children as required by Statute. The Court withheld an imposition of sanctions against CHARLES when he failed and refused to cooperate with discovery concerning the safety and welfare of the children and other financial issues. VICTORIA filed an appeal but had been forced to withdraw it to obtain reasonable discovery in this case. Soon after, the Court withdrew its promise of granting discovery and directed VICTORIA to the discovery commissioner who thereafter imposed more sanctions against her for attempting to obtain reasonable discovery. VICTORIA filed a Motion for Correction and/or Clarification of the July 19, 2007 Court Minute Order Pursuant to NRCP 60(b) and sought, but has been unable for one reason or another, to obtain from Judge Pomrenze a Court Order for correction and/or clarification due to such clerical error affecting issues

to be argued and decided at the August 28, 2007 hearing. The Minute Order does not in any way identify or itemize the pending motions. Judge Pomrenze failed to act immediately to resolve any and all such clerical error on certain issues. The Court deprived VICTORIA of due process when it failed and refused to enter Orders but instead shows favoritism to CHARLES and counsel of record when it allows them to memorialize the relief they seek in Findings of Facts and Conclusions of Law.

On August 14, 2007, VICTORIA filed Motion For A Final Child Custody and Support Order to uphold and enforce any and all Court Orders for child custody and support relief that for one reason or another has been put on administrative hold. The Court improperly vacated VICTORIA'S pending motions. VICTORIA filed a Notice of Appeal and argues that the filing of the appeal in no way stays her interest in challenging CHARLES' contempt motion and for the Court to impose sanctions on CHARLES and his counsel of record. On November 8, 2007, the Court issued an Oral Order improperly vacating VICTORIA'S motions scheduled to be heard on November 13, 2007. VICTORIA has further cause for concern because the Court's file is deliberately and purposefully silent as to the Court's ability and/or willingness to entertain an imposition of sanctions against CHARLES even though the parties' children would have each attained the age of majority. CHARLES' contumacious conduct is material to any award of fees and sanctions in this case and he is not legally excused from paying support payments and other outstanding debt.

COURT'S ABANDONMENT OF STANDARD OF PROOF

The Court's failure to apply any standard in this case is inconsistent with due process for her desire for and right to the companionship, care, custody and management of VICTORIA's children which is an interest far more precious than any property right. The Court abandoned Victoria's evidence: a.) subpoenaed Country Club Towers' management company for a copy of CHARLES' rental agreement; b.) contacted Dr. Louis Mortillaro to appear and testify that it was important that the children live in the residence of either parent, not in a separate apartment; that the parties were to begin counseling, and that the children continue in a traditional high school setting; c.) subpoenaed the Metropolitan Police to appear and produce the well-checks evidencing that the children were left alone without parental supervision; d.) withdrew her appeal to obtain reasonable discovery; e.) subpoenaed Charles' cell phone records evidencing his parenting from a cell phone; f.) subpoenaed Charles' bank application evidencing his substantial assets and annual earnings of $500,000; g.) submitted Charles' sworn affidavit evidencing the time and dates when he left the jurisdiction leaving the children home alone without parental supervision; h.) submitted sworn affidavits from friends that the children were living home alone without parental supervision at the Country Club Towers; i.) submitted a letter from the Clark County Principal of Academic Studies regarding Marco's poor attitude and behavior; j.) submitted Dr. McCosh's evaluation of Marco and diagnosis of ADHD, a plan for medication, and the need for a high structured and individualized program to deal with his anger and behavioral problems; k.)

submitted Marco's and Sarah's report cards, disciplinary reports, progress and classroom behavior reports. The Court selected Dr. Louis Mortillaro as the psychologist to evaluate the family and the parties' minor children and to give his recommendations to the Court, and it failed to consider Dr. Mortillaro's evaluations that it is important that the children live in the residence of either parent, not in a separate apartment. The Court knowingly and willingly permitted a long passage of time to elapse since Dr. Mortillaro's evaluation with certainly no protections built in for implementing his recommendations which has been adversely interfered with which included: "a continuance with psychological counseling; an encouragement for the children to finish their girl scout and boy scout activities; a continuance of academics for Marco in a traditional high school until he graduates; and a continuance of academics for Sarah at a traditional high school where she can complete her course work under supervision and graduate." The Court knowingly and purposefully refused to sanction CHARLES for failing to seek mediation prior to bringing his motion for a change of physical custody in violation of EDCR 5.81; failed to Order that the case be transferred and heard by a visiting judge in the interest of justice; failed to determine that CHARLES was in contempt for leaving the children alone and without parental supervision; rejected VICTORIA'S claims that the children were left alone without parental supervision at the Country Club Towers which prevented her from maintaining any contact with her children as required by Nevada Statute; assisted CHARLES in an unfair deprivation of VICTORIA'S parental rights, failed to preserve and promote the welfare of her children, and deprived the children's right to an appropriate education as

previously Ordered by the Court. The Court made the determination that if VICTORIA had any concerns about the children's welfare that she should contact to Dr. Mortillaro to gain his assistance and to follow up on his evaluations of the children. After unsuccessfully protesting CHARLES' actions to Dr. Mortillaro, with no response, VICTORIA proceeded to file another Motion For Order To Show Cause where the Court again refused to find CHARLES in contempt in believing that the children were living alone without parental supervision.

MOOTNESS –

VICTORIA contends that the issue of mootness is not over since she and the children possess rights that are still being affected by the outcome of this proceeding. CHARLES' obligation for support has not been fulfilled where there is an amount past due and owing. Consequently, since the support money is still owing, all other pending issues, along with an imposition of sanctions on underlying issues, the children's need for an appropriate education, still presents a continuing live case or controversy that is neither moot nor nonjusticiable. VICTORIA argues that the Court can recognize an exception to the mootness doctrine when she would suffer collateral legal consequences from the present action and consequences if the actions being appealed were allowed to stand. CHARLES has not voluntarily stopped his willful and disobedient conduct in leaving the children alone without parental supervision and without support and guidance in their education. VICTORIA further contends the trial Court retains its common law equitable powers over matters relating to the welfare and education of the children to the extent consistent with the best interest of the

child standard in the State of Nevada. Nevada Statutes created a presumption in favor of the children receiving an education. The Court unilaterally ordering a temporary custody arrangement did not take into consideration how VICTORIA could possibly support and guide her children's education when the minor children were living alone without parental supervision separate and apart from both parents; did not take into consideration on what impact VICTORIA'S non-participation in the support and guidance of her children's education would have on their present and future right to an education. Truancy, suspension, and withdrawal from the children's respective schools work a sufficient deprivation of property and liberty interests to trigger the protections of the due process clause. The Court did not place any procedural safeguards to protect those rights. Clearly, VICTORIA's interest in supporting and guiding her children's education warranted greater protection than 15 and 17 year olds' limited interest in their desire to live in an apartment without any parental supervision. The Court made numerous procedural mistakes in its eagerness to protect CHARLES and his counsel of record and protecting the children's education as previously Ordered by the Court was not among them.

DUE PROCESS -

VICTORIA was denied due process because the Court issued its Order without making findings of fact and conclusions of law on her pending motions before Ordering the parties to proceed to arbitration. VICTORIA fears that the arbitrator may not follow the law correctly without an order from the Court initially resolving all pending underlying issues. An additional benefit to CHARLES and his counsel of record

and otherwise harm to VICTORIA is the Court erroneously ordering VICTORIA to pay for the cost of arbitration. VICTORIA argues that under the facts of this case there can be no determination by an arbitrator without the Court's findings of fact and conclusions of law that CHARLES and his counsel of record are in contempt of prior Court orders. To submit VICTORIA to arbitration without contempt orders having been initially considered and determined by the Court would deprive VICTORIA of the benefits of due process. VICTORIA believes that the Court has a duty to decide those underlying issues first. VICTORIA further contends that because the mooting of VICTORIA'S motion prevents her from seeking a determination that the Court's temporary order was incorrect on the merits, it would be inequitable to award fees to CHARLES. That in prior proceedings, CHARLES' response and opposition is legally insufficient and unable to sustain a viable objection, categorically frivolous and meritless all done to aid, facilitate and to perpetuate fraud upon the Court. The Court cannot act as an employment office for unemployed or under-employed attorneys. That mooting issues applies to the Court denying VICTORIA of her constitutional right to a determination of other existing equitable considerations and reward CHARLES and his counsel of record to evade review of the underlying issues enumerated in her pending motions. CHARLES' contumacious conduct stops for a time being, but he thereafter purges himself of such conduct and begins again - clearly demonstrating a repeated pattern and practice since the inception of the divorce decree. A real-life controversy between the parties with a personal stake in the outcome has and does continue to exist since it is illogically impossible to make the age of the children irrelevant in

terms of their need for an appropriate education in the future.

PUBLIC INTEREST/ STATUTE IS VAGUE/ EQUAL PROTECTION -

The Court interfered with VICTORIA'S obligation to limit her children's freedom, association and activity that is harmful to their welfare and best interests; interfered with VICTORIA'S obligation in seeing that they do not purchase alcohol or cigarettes, engage in dangerous casual sex, nor become truant from school. VICTORIA contends that the statute creates no criteria for determining the children's right to possess such limitless freedoms which she contends they do not possess without parental supervision and control, nor does it create any criteria for determining the children's right to expand any limitless freedoms without parental supervision and control and as such poses an issue of broad public interest that is likely to recur. The Court failed to use a reasonable cause test to determine whether or not VICTORIA'S children even have the right to possess such limitless freedoms. The Court ignored the fact that VICTORIA'S children are still children when they lack the maturity and a sense of responsibility, when they are susceptible to negative influences and peer pressure, when they lack the ability to foresee the future consequences of their behavior, and when they cannot legally contract. Family Court has demonstrated a custom and policy that amounts to a deliberate indifference to this class of individuals' right to possess such limitless freedoms, which belong only to mature and responsible adults. The Court is the moving force behind these constitutional violations against VICTORIA and unconstitutionally expanded these

limitless freedoms to her children over VICTORIA'S objection.

CERTIFICATE OF SERVICE

I, VICTORIA GIAMPA, CERTIFY THAT ON THE 10th DAY OF DECEMBER, 2007, I SERVED A COPY OF THIS COMPLETED CASE APPEAL STATEMENT BY MAILING IT U.S. POSTAGE, FIRST CLASS MAIL, POSTAGE PREPAID TO BRYCE C. DUCKWORTH, ESQ., 1935 VILLAGE CENTER CIRCLE, LAS VEGAS, NEVADA 89134.

DATED THIS 10TH DAY OF DECEMBER, 2007.

_____

VICTORIA GIAMPA